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9 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

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11 RETAIL WHOLESALE
DEPARTMENT STORE UNION
LOCAL 338 RETIREMENT FUND, on
behalf of itself and all others similarly
situated,

12

13 Plaintiff,

14

15 v.

16 BEYOND MEAT, INC., ETHAN
WALDEN BROWN, MARK J.
NELSON, and PHILLIP E. HARDIN,

17

18 Defendants.

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20 Case No. 2:23-cv-03602 MWF (AGRx)

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<i>SEB Inv. Mgmt. AB v. Symantec Corp.</i> , 2021 WL 1540996 (N.D. Cal. Apr. 20, 2021).....	10
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STATUTES

15 U.S.C. § 78u-4 <i>et seq.</i>	<i>passim</i>
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H.R. Conf. Rep. No. 104-369 (1995), <i>reprinted in</i> 1995 U.S.C.C.A.N. 730	8

1 Retail Wholesale Department Store Union Local 338 Retirement Fund
 2 (“Local 338”) respectfully submits this memorandum of points and authorities in
 3 support of its motion, pursuant to Section 21D(a)(3)(B) of the Securities Exchange
 4 Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the
 5 Private Securities Litigation Reform Act of 1995 (“PSLRA”), for entry of an order:
 6 (1) appointing Local 338 as Lead Plaintiff; (2) approving Local 338’s selection of
 7 Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”) to serve as
 8 Lead Counsel for the Class; and (3) granting any such further relief as the Court may
 9 deem just and proper.

10 **I. PRELIMINARY STATEMENT**

11 On May 11, 2023, Local 338, through its counsel Bernstein Litowitz, filed the
 12 above-captioned securities class action on behalf of purchasers of Beyond Meat, Inc.
 13 (“Beyond Meat” or the “Company”) common stock between May 5, 2020 and
 14 October 13, 2022, inclusive (the “Class Period”). This action alleges violations of
 15 Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78t(a), and U.S.
 16 Securities and Exchange Commission Rule 10b-5 promulgated thereunder, 17
 17 C.F.R. § 240.10b-5, against Beyond Meat and certain of the Company’s current and
 18 former senior executives (collectively, “Defendants”). Specifically, the action
 19 alleges that, throughout the Class Period, Defendants made numerous materially
 20 false and misleading statements concerning the Company’s ability to produce plant-
 21 based meats at commercial scale, repeatedly touted the success of the Company’s
 22 product tests with numerous high-profile partnerships, and blamed delays in
 23 launching those partnerships on Covid-19. Beyond Meat investors, including Local
 24 338, incurred significant losses when a series of disclosures revealed that the
 25 Company was experiencing rising expenses and inventories, including a \$1.8 million
 26 inventory write-off, ongoing scaling problems and deteriorating relationships with
 27 its potential partners, and the abrupt departure of several of its top executives.

1 The PSLRA provides that the “most adequate plaintiff” is to serve as Lead
 2 Plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). Under the PSLRA, the most adequate
 3 plaintiff is the movant with the “largest financial interest” in the relief sought by the
 4 Class in this litigation and that also makes a *prima facie* showing that it is a typical
 5 and adequate Class representative under Rule 23 of the Federal Rules of Civil
 6 Procedure (“Rule 23”). 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). For the reasons set forth
 7 below, Local 338 is the “most adequate plaintiff” by virtue of, among other things,
 8 the approximately \$2.7 million in losses it incurred on its purchases of more than
 9 43,000 shares of Beyond Meat common stock during the Class Period.¹

10 In addition to asserting the largest financial interest, Local 338 readily
 11 satisfies the relevant requirements of Rule 23 because its claims are typical of those
 12 of all members of the Class and it will fairly and adequately represent the interests
 13 of the Class. Local 338 is a paradigmatic Lead Plaintiff under the PSLRA because
 14 it is a sophisticated institutional investor with a significant financial interest in the
 15 litigation, and has prior experience serving as a lead plaintiff in securities class action
 16 litigation and supervising the work of outside counsel. Further, Local 338 fully
 17 understands the Lead Plaintiff’s obligations to the Class under the PSLRA and it is
 18 willing and able to undertake those responsibilities to ensure the vigorous
 19 prosecution of this action. Indeed, Local 338 has already demonstrated its
 20 commitment and ability to effectively prosecute this action, including through its
 21 filing of the only complaint asserting these claims against Defendants. Accordingly,
 22 Local 338 has both the incentive and proven ability to supervise and monitor
 23 counsel.

24
 25 _____
 26 ¹ Local 338’s PSLRA-required Certification is provided as Exhibit A to the
 27 Declaration of Jonathan D. Uslaner (the “Uslaner Decl.”), filed concurrently
 28 herewith. In addition, a chart providing calculations of Local 338’s losses is
 provided as Exhibit B to the Uslaner Decl. Unless otherwise noted, all internal
 citations and quotations are omitted and all emphasis is added.

1 Local 338 has also demonstrated its adequacy through its selection of
 2 Bernstein Litowitz to serve as Lead Counsel for the Class. Bernstein Litowitz is
 3 eminently qualified to prosecute this case and has extensive experience in securities
 4 fraud litigation, which will benefit the Class.

5 Based on Local 338's financial interest in the outcome of this action, and its
 6 ability to oversee counsel, Local 338 respectfully requests that the Court appoint it
 7 as Lead Plaintiff and otherwise grant its motion.

8 **II. SUMMARY OF THE ACTION**

9 Beyond Meat is a global producer of plant-based meat substitutes such as
 10 Beyond Burgers, Beyond Sausages, Beyond Meatballs, and Beyond Pepperoni.
 11 Founded in 2009, Beyond Meat found success creating small, sample-sized
 12 prototypes of its product offerings and, subsequently, became the best-performing
 13 IPO in nearly two decades when it went public in 2019. After going public, Beyond
 14 Meat launched a series of high-profile partnerships with foodservice providers such
 15 as Starbucks, McDonalds, KFC, Pizza Hut, and Taco Bell.

16 The action alleges that, throughout the Class Period, Defendants made
 17 numerous materially false and misleading statements and omissions concerning the
 18 Company's ability to produce plant-based meats at scale. Specifically, Defendants
 19 repeatedly assured investors that Beyond Meat conducted "extensive testing" to
 20 "ensure manufacturability" of its plant-based meat products at commercial scale, and
 21 touted the success of the Company's product tests with its large-scale partnerships
 22 as "very positive." Further, Defendants blamed any delays in launching these large-
 23 scale partnerships on Covid-19.

24 In reality, although Beyond Meat had some early success creating its products
 25 in a lab in small quantities, it struggled to manufacture those products at scale to the
 26 specifications of its partners. According to current and former employees of the
 27 Company, Beyond Meat suffered from widespread scaling issues, misaligned and
 28 delayed decision-making, and severe production delays. These problems led some

1 partners to balk at the high price of Beyond Meat's products and express doubts
 2 about the Company's ability to produce them at commercial scale.

3 The truth began to emerge on October 22, 2021, when Beyond Meat
 4 announced that the Company was reducing its third quarter net revenues outlook by
 5 up to \$34 million, or 25%. As part of the announcement, Beyond Meat also revealed
 6 that the Company's expenses and inventories were continuing to rise. As a result of
 7 these disclosures, the price of Beyond Meat stock declined by \$12.82 per share, or
 8 nearly 12%. Then, on November 10, 2021, after the markets closed, Beyond Meat
 9 announced a \$1.8 million inventory write-off. As a result of this disclosure, the price
 10 of Beyond Meat stock declined by \$12.55 per share, or nearly 13%. However,
 11 Defendants continued to assure investors of the success of Beyond Meat's
 12 partnerships, and blamed the Company's poor financial results on the Covid-19
 13 pandemic.

14 One week later, on November 17, 2021, *Bloomberg* published an article
 15 highlighting the delays in product roll out and execution challenges Beyond Meat
 16 was facing. That article, citing five former Beyond Meat employees, laid bare the
 17 Company's ongoing scaling problems and how those problems were tarnishing the
 18 Company's relationships with potential partners. In response to this news, the price
 19 of Beyond Meat stock declined by \$3.01 per share, or over 3.5%. Then, on
 20 December 9, 2021, multiple media sources reported that Taco Bell had cancelled a
 21 planned test of Beyond Carne Asada due to ongoing quality concerns. On this news,
 22 the price of Beyond Meat stock declined by \$5.88 per share, or nearly 8%. In the
 23 wake of these disclosures, Defendants continued to assure investors that its product
 24 testing was going well.

25 Finally, on October 14, 2022, Beyond Meat announced the departure of
 26 several of its top executives, including its Chief Operating Officer, Chief Growth
 27 Officer, and Chief Financial Officer. These disclosures caused the price of Beyond
 28 Meat stock to decline by \$1.43 per share, or over 9.6%.

III. ARGUMENT

A. Local 338 Is The Most Adequate Plaintiff

Local 338 respectfully submits that it is entitled to be appointed Lead Plaintiff because it is the movant “most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA sets forth the procedure for selecting the Lead Plaintiff in class actions arising under the federal securities laws and provides a presumption in favor of the movant that has the “largest financial interest” in the relief sought by the Class and satisfies the relevant requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (“The [PSLRA] provides a simple . . . process for identifying the lead plaintiff pursuant to these criteria.”). As set forth below, Local 338 believes it is the “most adequate plaintiff” and is entitled to be appointed as Lead Plaintiff.

1. Local 338's Motion Is Timely

Under the PSLRA, any Class member may move for appointment as Lead Plaintiff within 60 days of the publication of notice that the first action asserting substantially the same claims has been filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). On May 11, 2023, Local 338 filed the above-captioned securities class action in this District, asserting claims for violations of Sections 10(b) and 20(a) of the Exchange Act against Defendants. That same day, counsel for Local 338, Bernstein Litowitz, published a notice on *Business Wire* alerting investors to the pendency of the action and informing them of the 60-day deadline to seek appointment as Lead Plaintiff, which is July 10, 2023. *See* Uslaner Decl., Ex. C. Accordingly, Local 338's motion is timely.

2. Local 338 Has The Largest Financial Interest In The Relief Sought By The Class

Local 338 is entitled to be appointed Lead Plaintiff because it has the largest financial interest in the relief sought by the Class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). As demonstrated herein, Local 338 suffered losses of

1 approximately \$2.7 million on its Class Period purchases of Beyond Meat common
 2 stock. *See Uslaner Decl.*, Exs. A & B. To the best of Local 338's knowledge, there
 3 is no other applicant seeking Lead Plaintiff appointment that has a larger financial
 4 interest in this litigation. Accordingly, Local 338 has the largest financial interest of
 5 any qualified movant seeking Lead Plaintiff status and is the presumptive "most
 6 adequate plaintiff." 15 U.S.C. § 78u-4(a)(3)(B)(iii).

7 **3. Local 338 Otherwise Satisfies The Requirements Of Rule 23**

8 In addition to possessing the largest financial interest in the outcome of the
 9 litigation, Local 338 otherwise satisfies the requirements of Rule 23. *See* 15 U.S.C.
 10 § 78u-4(a)(3)(B)(iii)(I)(cc). On a motion to serve as lead plaintiff, a movant need
 11 only make a "preliminary showing" under Rule 23 that the proposed lead plaintiff's
 12 claims are typical and adequate. *Roberti v. OSI Sys., Inc.*, 2014 WL 12845727, at
 13 *3 (C.D. Cal. Mar. 17, 2014) (Fitzgerald, J.). As detailed below, Local 338 satisfies
 14 these requirements.

15 Local 338's claims are typical of the claims of other purchasers of Beyond
 16 Meat common stock. "To make a prima facie showing of typicality, a moving
 17 plaintiff should establish that its claims are similar to all class members. . . . A prima
 18 facie showing of typicality does not require that the claims of the movant be nearly
 19 identical to those of the class." *Id.* Here, Local 338 and all other Class members
 20 suffered the same injuries, their claims arise from the same course of events, and
 21 their legal arguments to prove Defendants' liability are nearly identical. Like all
 22 other Class members, Local 338 (1) purchased Beyond Meat common stock during
 23 the Class Period, (2) at prices allegedly artificially inflated by Defendants' materially
 24 false and misleading statements and/or omissions, and (3) was harmed when the
 25 truth was revealed. *See Shreves v. Xunlei Ltd.*, 2015 WL 5446935, at *3 (C.D. Cal.
 26 Sept. 15, 2015) (Fitzgerald, J.) (finding typicality requirement met when proposed
 27 lead plaintiff "purchased [defendant corporation] stock at prices [movant] alleges
 28

were artificially inflated by Defendants' misrepresentations and omissions, and was allegedly damaged thereby"). As such, Local 338 is a typical Class representative.

Local 338 similarly satisfies the adequacy requirement of Rule 23. Under Rule 23(a)(4) of the Federal Rules of Civil Procedure, the representative party must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "The adequacy requirement is met if there are no conflicts between the representative and class interests and the representative's attorneys are qualified, experienced, and generally able to conduct the litigation." *Ashraf v. Miniso Grp. Holding Ltd.*, 2022 WL 19333267, at *3 (C.D. Cal. Nov. 8, 2022). Local 338 satisfies these elements because its substantial financial stake in the litigation provides the incentive to vigorously represent the Class's claims. Local 338's interests are aligned with those of the other Class members and are not antagonistic in any way. There are no facts to suggest any actual or potential conflict of interest or other antagonism between Local 338 and other members of the Class.

Further, Local 338 has experience serving as a lead plaintiff in securities class actions and supervising the work of outside counsel, including its proposed Lead Counsel Bernstein Litowitz. Local 338 is currently serving as lead plaintiff in *Retail Wholesale Department Store Union Local 338 Retirement Fund v. Stitch Fix, Inc.*, No. 22-cv-4893 (N.D. Cal.), with Bernstein Litowitz serving as lead counsel, and in *Local 295 IBT Employer Group Welfare Fund v. Compass Minerals International, Inc.*, No. 22-cv-2432 (D. Kan.). As such, Local 338 fully understands the Lead Plaintiff's obligations under the PSLRA to oversee and supervise the litigation separate and apart from counsel, and has submitted a sworn Certification as to its willingness and ability to fulfill those duties. See Uslaner Decl., Ex. A.

In addition, Local 338—a sophisticated institutional investor responsible for managing approximately \$500 million in assets—is exactly the type of investor that Congress sought to empower, through the enactment of the PSLRA, to lead securities class actions. See *Lloyd v. CVB Fin. Corp.*, 2011 WL 13128303, at *5

1 (C.D. Cal. Jan. 21, 2011) (noting that the PSLRA “establishes a preference that
 2 sophisticated institutional investors direct the course of securities cases”); H.R.
 3 Conf. Rep. No. 104-369, at *34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733
 4 (1995) (explaining that “increasing the role of institutional investors in class actions
 5 will ultimately benefit shareholders and assist courts by improving the quality of
 6 representation in securities class actions”). As such, Local 338 possesses the
 7 experience and resources to vigorously litigate the action and supervise Lead
 8 Counsel.

9 Local 338’s adequacy is also demonstrated by the fact that it has already taken
 10 measures to protect the interests of the Class and ensure that the claims are
 11 vigorously and effectively prosecuted. Most notably, Local 338, through its counsel,
 12 Bernstein Litowitz, filed the only complaint asserting these claims against
 13 Defendants, and initiated the process for investors to seek appointment as Lead
 14 Plaintiff.

15 Finally, Local 338 has demonstrated its adequacy through its selection of
 16 Bernstein Litowitz to serve as Lead Counsel to represent the Class. As discussed
 17 more fully below, Bernstein Litowitz is highly qualified and experienced in
 18 securities class action litigation and has repeatedly demonstrated an ability to
 19 conduct complex securities class action litigation effectively. Accordingly, Local
 20 338 satisfies the typicality and adequacy requirements of Rule 23.

21 **B. Local 338 Selected Well-Qualified Lead Counsel To Represent The
 22 Class**

23 Pursuant to the PSLRA, a movant shall, subject to Court approval, select and
 24 retain counsel to represent the class it seeks to represent, and the court should not
 25 disturb that selection unless it is necessary to “protect the interests of the class.” 15
 26 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa); *see also Cohen v. U.S. Dist. Ct. for N. Dist. of
 27 Cal.*, 586 F.3d 703, 712 (9th Cir. 2009) (“[I]f the lead plaintiff has made a reasonable
 28 choice of counsel, the district court should generally defer to that choice.”).

1 Bernstein Litowitz is among the preeminent securities class action law firms
 2 in the country. *See Uslaner Decl.*, Ex. D (Bernstein Litowitz's Firm Résumé).
 3 Bernstein Litowitz served as lead counsel in *In re WorldCom, Inc. Securities*
 4 *Litigation*, No. 02-cv-3288 (S.D.N.Y.), in which settlements totaling more than \$6
 5 billion—the second-largest recovery in securities class action history—were
 6 obtained for the class. Bernstein Litowitz also secured a resolution of \$2.43 billion
 7 for the class in *In re Bank of America Corp. Securities, Derivative & ERISA*
 8 *Litigation*, No. 09-md-2058 (S.D.N.Y.), a \$1.06 billion recovery for the class in *In*
 9 *re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation*, No. 05-cv-1151
 10 (D.N.J.), and a \$730 million settlement on behalf of the class in *In re Citigroup Inc.*
 11 *Bond Litigation*, No. 08-cv-9522 (S.D.N.Y.).

12 Significant examples in which courts in this District and Circuit have
 13 recognized Bernstein Litowitz as adequate and qualified class counsel in securities
 14 class actions include: *In re Allergan, Inc. Proxy Violation Securities Litigation*, No.
 15 14-cv-2004 (C.D. Cal.) (recovering \$250 million for investors); *In re New Century*
 16 *Securities Litigation*, No. 07-cv-931 (C.D. Cal.) (recovering approximately \$125
 17 million for investors); *In re Mattel, Inc. Securities Litigation*, No. 19-cv-10860 (C.D.
 18 Cal.) (recovering \$98 million for investors); *In re Merit Medical Systems, Inc.*
 19 *Securities Litigation*, No. 19-cv-2326 (C.D. Cal.) (recovering \$18.25 million for
 20 investors); *Roberti v. OSI Systems Inc.*, No. 13-cv-9174 (C.D. Cal.) (Fitzgerald, J.)
 21 (recovering \$15 million for investors); *In re McKesson HBOC, Inc. Securities*
 22 *Litigation*, No. 99-cv-20743 (N.D. Cal.) (recovering \$1.05 billion for investors, the
 23 largest recovery ever in a securities class action in this Circuit); *Hefler v. Wells*
 24 *Fargo & Company*, No. 16-cv-5479 (N.D. Cal.) (recovering \$480 million for
 25 investors); *In re Clarent Corp. Securities Litigation*, No. 01-cv-3361 (N.D. Cal.)
 26 (conducting a four-week trial and obtaining a favorable jury verdict finding the CEO
 27 and former auditor of the defendant company liable, leading to a recovery of millions
 28 of dollars for investors); and *Retail Wholesale Department Store Union Local 338*

1 *Retirement Fund v. Stitch Fix, Inc.*, No. 22-cv-4893 (N.D. Cal.) (Bernstein Litowitz
2 currently serving as lead counsel, with Local 338 serving as lead plaintiff).

3 Thus, the Court may be assured that by granting this motion, the Class will
4 receive the highest caliber of legal representation.²

5 **IV. CONCLUSION**

6 For the reasons discussed above, Local 338 respectfully requests that the
7 Court appoint it as Lead Plaintiff, approve its selection of Bernstein Litowitz as Lead
8 Counsel for the Class, and grant any such further relief as the Court may deem just
9 and proper.

10 Dated: July 10, 2023

Respectfully submitted,

11 **BERNSTEIN LITOWITZ BERGER
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16 -and-

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19

20 ² Local 338 brings to the Court's attention an order issued by a court in the United
21 States District Court for the Northern District of California in an unrelated action in
22 which Bernstein Litowitz served as lead counsel for the lead plaintiff in that case,
SEB Investment Management AB, and as class counsel for the certified class. *See SEB Inv. Mgmt. AB v. Symantec Corp.*, 2021 WL 1540996, at *1 (N.D. Cal. Apr. 20, 2021) (Uslaner Decl., Ex. E). Counsel for an unsuccessful lead plaintiff movant raised questions about Bernstein Litowitz's hiring of a former employee of the lead plaintiff. Following discovery and extensive briefing, the court allowed Bernstein Litowitz to continue as class counsel. *See id.* at *1-2. The court nevertheless ordered Bernstein Litowitz to bring the order to the attention of the court when seeking appointment as class counsel, and also to the decision maker for the proposed lead plaintiff who selects class counsel. *See id.* at *2. Local 338 is aware of the order, and affirms its selection of Bernstein Litowitz as proposed Lead Counsel. Importantly, the *Symantec* court granted final approval of a \$70 million settlement achieved by SEB Investment Management AB and Bernstein Litowitz. In addition, courts throughout the country have repeatedly appointed Bernstein Litowitz as lead or class counsel in securities class actions after being apprised of the *Symantec* order. *See* Uslaner Decl., Ex. F (collecting cases).

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 10, 2023, I caused the foregoing to be
3 electronically filed with the Clerk of the Court using the CM/ECF system, which
4 will send notification of such filing to the email addresses denoted on the Electronic
5 Mail Notice List.

6

7 **BERNSTEIN LITOWITZ BERGER**
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